

Directive 2008/94/EC of the European Parliament and of the Council
of 22 October 2008 on the protection of employees in the event of the
insolvency of their employer (Codified version) (Text with EEA relevance)

DIRECTIVE 2008/94/EC OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

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on the protection of employees in the event of the insolvency of their employer

(Codified version)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article
137(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

After consultation of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽²⁾,

Whereas:

- (1) Council Directive 80/987/EEC of 20 October 1980 on the protection of employees in the event of the insolvency of their employer⁽³⁾ has been substantially amended several times⁽⁴⁾. In the interests of clarity and rationality the said Directive should be codified.
- (2) The Community Charter of Fundamental Social Rights for Workers adopted on 9 December 1989 states, in point 7, that the completion of the internal market must lead to an improvement in the living and working conditions of workers in the Community and that this improvement must cover, where necessary, the development of certain aspects of employment regulations such as procedures for collective redundancies and those regarding bankruptcies.
- (3) It is necessary to provide for the protection of employees in the event of the insolvency of their employer and to ensure a minimum degree of protection, in particular in order to guarantee payment of their outstanding claims, while taking account of the need for balanced economic and social development in the Community. To this end, the Member States should establish a body which guarantees payment of the outstanding claims of the employees concerned.
- (4) In order to ensure equitable protection for the employees concerned, the state of insolvency should be defined in the light of the legislative trends in the Member States and that concept should also include insolvency proceedings other than liquidation. In

this context, Member States should, in order to determine the liability of the guarantee institution, be able to lay down that where an insolvency situation results in several insolvency proceedings, the situation is to be treated as a single insolvency procedure.

- (5) It should be ensured that the employees referred to in Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC⁽⁵⁾, Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by the ETUC, UNICE and CEEP⁽⁶⁾ and Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship⁽⁷⁾ are not excluded from the scope of this Directive.
- (6) In order to ensure legal certainty for employees in the event of insolvency of undertakings pursuing their activities in a number of Member States, and to strengthen employees' rights in line with the established case-law of the Court of Justice of the European Communities, provisions should be laid down which expressly state which institution is responsible for meeting pay claims in these cases and establish as the aim of cooperation between the competent administrative authorities of the Member States the early settlement of employees' outstanding claims. Furthermore it is necessary to ensure that the relevant arrangements are properly implemented by making provision for collaboration between the competent administrative authorities in the Member States.
- (7) Member States may set limitations on the responsibility of the guarantee institutions. Those limitations must be compatible with the social objective of the Directive and may take into account the different levels of claims.
- (8) In order to make it easier to identify insolvency proceedings, in particular in situations with a cross-border dimension, provision should be made for the Member States to notify the Commission and the other Member States about the types of insolvency proceedings which give rise to intervention by the guarantee institution.
- (9) Since the objective of the action to be taken cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (10) The Commission should submit to the European Parliament and the Council a report on the implementation and application of this Directive in particular as regards the new forms of employment emerging in the Member States.
- (11) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex I, Part C,

HAVE ADOPTED THIS DIRECTIVE:

Status: This is the original version (as it was originally adopted).

- (1) [OJ C 161, 13.7.2007, p. 75.](#)
- (2) Opinion of the European Parliament of 19 June 2007 ([OJ C 146 E, 12.6.2008, p. 71](#)) and Council Decision of 25 September 2008.
- (3) [OJ L 283, 28.10.1980, p. 23.](#)
- (4) See Annex I, Parts A and B.
- (5) [OJ L 14, 20.1.1998, p. 9.](#)
- (6) [OJ L 175, 10.7.1999, p. 43.](#)
- (7) [OJ L 206, 29.7.1991, p. 19.](#)